

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**AMAZON.COM SERVICES LLC**

**and**

**RETAIL, WHOLESALE AND DEPARTMENT  
STORE UNION**

**Cases 10-CA-290944  
10-CA-290974  
10-CA-291045  
10-CA-292230  
10-CA-292238  
10-CA-292966  
10-CA-294283  
10-CA-295768  
10-CA-298933**

**ORDER RESCHEDULING HEARING**

**IT IS HEREBY ORDERED** that the hearing in this matter is rescheduled from September 25, 2023, to **January 29, 2024, at 10:00 AM** in the Hearing Room at the National Labor Relations Board, Birmingham Resident office located at 1130 22nd St S, Ridge Park Place Ste 3400, Birmingham, AL 35205-2885. The hearing will continue consecutive days until concluded.

Dated: September 6, 2023



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LISA Y. HENDERSON  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 10  
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BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

<b>AMAZON.COM SERVICES, LLC,</b>	)	
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<b>and</b>	)	<b>Cases 10-CA-290944</b>
	)	<b>10-CA-290974</b>
<b>RETAIL, WHOLESALE AND</b>	)	<b>10-CA-291045</b>
<b>DEPARTMENT STORE UNION</b>	)	<b>10-CA-292230</b>
	)	<b>10-CA-292238</b>
	)	<b>10-CA-292966</b>
	)	<b>10-CA-294283</b>
	)	<b>10-CA-295768</b>
	)	<b>10-CA-298933</b>
	)	<b>10-RC-269250</b>
	)	

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**EMPLOYER’S MOTION FOR CORRECTION OF REPORT AND MEANINGFUL  
NOTICE OF OBJECTIONS**

Pursuant to Sections 102.65(a) and 102.69 of the National Labor Relations Board’s (“NLRB” or “Board”) Rules and Regulations, Amazon.com Services LLC (“Amazon” or “Employer”), moves the Regional Director of Region 10 of the NLRB (the “Regional Director”) to issue an Amended Report on Objections and Challenged Ballots, Order Consolidating Cases and Notice of Hearing that corrects her Report and provides the Employer with meaningful notice and the full opportunity to litigate the Objections filed by Retail, Wholesale and Department Store Union (the “Petitioner” or the “Union”) in the above-captioned case.

**I. BACKGROUND**

This consolidated case arises out of a re-run mail ballot election held at Amazon’s BHM1 fulfillment center in February and March 2022. After months of inaction following the vote count in March 2022 showing a majority of counted votes against representation by the Union the Regional Director issued a Report on Objections and Challenged Ballots, Order Consolidating Cases, and Notice of Hearing (the “Order”) on June 6, 2023. The Order consolidated Case No. 10-

RC-269250 with multiple unfair labor practice cases (Case Nos. 10-CA-290944 et al.),<sup>1</sup> and set a hearing on the Petitioner’s Objections 1, 2, 4, 5, 7, 9, 10, 11, 16, 17, 18, 19, 20, and 21, the Employer’s Objections 1 through 7, and the determinative challenged ballots to begin at 10:00 a.m. Central Time on Monday, September 25, 2023.

While the Order identified which of the Petitioner’s Objections will be heard, it failed to provide meaningful notice of the conduct alleged in Petitioner’s Objections 1, 2, 4, 5, 7, 9, 10, 11, 17, 18, and 19. Should meaningful notice of the conduct alleged in the Objections not be provided, the Petitioner would be permitted to proceed with a hearing on certain Objections without providing Amazon enough information to prepare its case and defenses to these Objections. In the interest of fairness, due process and efficiency, Amazon requests that the Regional Director provide additional detail or clarification, as requested below, to allow the parties to prepare for hearing.

## **II. ARGUMENT**

The Regional Director should issue an amended Order that provides Amazon with clear statements of the Petitioner’s Objections. It is well established that “objections must contain a short statement of the reasons therefor . . . . The statement should be specific, not conclusionary[.]” NLRB Casehandling Manual, Part Two, Representation Proceedings § 11392.5 (Sept. 2020). This holds true for a hearing notice as well—it must be meaningful.

Amazon’s procedural due process rights will be denied if the Region fails to provide the fundamental requirements of “meaningful notice . . . and . . . full and fair opportunity to litigate.” *Factor Sales, Inc.*, 347 NLRB 747, 747 (2006) (alterations in original). In order “[t]o be

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<sup>1</sup> The Complaint initially included Charge 10-CA-298931. On August 14, 2023, the Regional Director issued an Order Severing Consolidated Complaint Allegations, which severed Charge 10-CA-298931, and associated Complaint paragraphs 1(s), (t), and (u), 13, 14(a) – (d), 15 (a) – (c), and related parts of paragraph 16 from the Complaint.

‘meaningful’ the notice must provide a party with a clear statement of the accusation against it.” *Id.* at 747–48; *see also id.* at 748 (“Not only did the wording of the objection and the course of the litigation fail to provide clear notice of the allegation, they also affirmatively misled the [e]mployer into defending against a theory that was irrelevant to the true issues at stake.”). As the Board has held, “[i]t is axiomatic that [a party] cannot fully and fairly litigate a matter unless it knows what the accusation is.” *Champion Int’l Corp.*, 339 NLRB 672, 673 (2003). Finally, by proceeding to a hearing with only scant information, the presumption of a free and fair election is diluted in favor of speculative objections.

Amazon appreciates that in her Order the Regional Director provided some detail about certain Petitioner objections that will allow it to prepare for hearing. But in several instances, the Order does not provide meaningful notice of the facts and circumstances of the Petitioner’s objections, or it creates confusion about whether certain objections are truly “coextensive” with related unfair labor practice charges. The information requested by Amazon is necessary for it to present its defense against these objections. It also promotes judicial economy, assists the parties in narrowing the issues, encourages a clear record, and ultimately provides for a fair hearing—especially as the Regional Director has consolidated objections, challenges, and unfair labor practice allegations into one hearing.<sup>2</sup>

The Regional Director issued a Supplemental Report on April 30, 2021 in response to a similar motion by Amazon following the first election at BHM1, and Amazon believes the same process will facilitate the parties to proceed efficiently.

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<sup>2</sup> Amazon reserves the right to seek additional clarification and/or relief from the Order, including as to the process and timing by which the various issues will be litigated or otherwise resolved.

#### A. Petitioner Objection 1

In Objection 1, the Petitioner alleged that the “Employer unlawfully removed union literature from employee breakrooms, restrooms, *and other nonworking areas of the facility*” (emphasis added). The Order states that Objection 1 is “coextensive” with unfair labor practice Case 10-CA-291045. Case 10-CA-291045 involved two alleged incidents involving alleged removal of union literature from breakrooms and bathrooms. It did not include allegations related to “other non-working areas of the facility.” Thus, even though the Order states Objection 1 and Case 10-CA-291045 are coextensive, its text implies Objection 1 may be broader than Case 10-CA-291045. The Order does not specify what other “nonworking areas of the facility” may be at issue, the dates of any other purported removal, or the identity of the employer’s agents allegedly involved in any removal not covered by Case 10-CA-291045. Amazon moves the Region to either confirm that Objection 1 is fully coextensive with Case 10-CA-291045, or provide additional details about the time, place and employer agents allegedly involved in any other allegations covered by Objection 1.

#### B. Petitioner Objection 2

In Objection 2, the Petitioner alleged that “the Employer unlawfully applied a rule prohibiting the posting of literature regarding the union campaign in work areas, by knowingly permitting employees to post anti-union messages in work areas, but forbidding other employees from posting pro-union messages in the same work areas.” The Order failed to specify which “work areas” are allegedly at issue, the dates of the alleged objectionable conduct, the identity of the employer agents who allegedly forbade pro-union postings, or the text of the allegedly “pro-union message.” The Order states that Objection 2 is “coextensive” with unfair labor practices Case 10-CA-295768. Case-10-295768 only involved the alleged removal of union literature from

support beams at BHM1. Like Objection 1, Amazon requests that the Region confirm that Objection 2 is fully coextensive with Case 10-CA-295768 and involves only the specific alleged removal of union literature at issue in Case 10-CA-295768, or provide additional details about any other alleged removal of union literature from or discriminatory treatment of campaign literature in “work areas,” including details about the time, place, employer agents, and text of the literature allegedly involved in any additional allegations covered by Objection 2.

C. Petitioner Objection 4

In Objection 4, the Petitioner alleged that “the Employer unlawfully engaged in surveillance, and/or created the impression of surveillance, of employees engaged in hand-billing and/or other protected concerted activities in the employee parking lot.” The Order states that Objection 4 was coextensive with Case 10-CA-292238. That unfair labor practice charge involved a light projection on the façade of the BHM1 facility, but did not involve handbilling. Amazon moves the Region to confirm that Objection 4 is fully coextensive with Case 10-CA-292238 and therefore does not include any handbilling allegations, or provide additional details about any alleged handbilling violations, including the location of the activity, purported dates, and the identity of Amazon agents allegedly engaged in surveillance.

D. Petitioner Objections 5, 9, and 11

In Objection 5, the Petitioner alleged that “the Employer unlawfully engaged in surveillance, and/or created the impression of surveillance, and coerced an employee engaged in discussions about the union and/or other protected concerted activities in an employee breakroom.” In Objection 9, the Petitioner alleged that “Employer unlawfully engaged in surveillance, and/or created the impression of surveillance, and coerced an employee in the presence of other employees in an employee breakroom by stopping the only employee wearing a pro-union button

and asking for (b) (6), name, immediately after the employee had been engaged in protected concerted activities in the breakroom.” In Objection 11, the Petitioner alleged that “the Employer unlawfully engaged in surveillance, and/or created the impression of surveillance, in employee breakrooms when the Employer’s agents actively observed employees engaging in protected concerted activities in breakrooms and when the Employer’s agents stationed themselves in employee breakrooms during employees’ breaks to observe and/or prevent such activities.” The Order states that all three objections are coextensive with Case 10-CA-292230. That case involved brief alleged interactions involving (b) (6), (b) (7)(C). Amazon moves the Region to confirm that these three objections are fully coextensive with Case 10-CA-292230, and therefore only involve (b) (6), (b) (7)(C) alleged conduct, or provide additional details on the date, location and Amazon agents involved in any other conduct covered by Objections 5, 9 and 11.

E. Petitioner Objection 7

In Objection 7, the Petitioner alleged that “the Employer unlawfully engaged in surveillance, and/or created the impression of surveillance, when its agents followed and/or otherwise surveilled the Petitioner’s organizers as they visited employees’ homes.” The Order failed to specify where or when the alleged objectionable conduct occurred, or the identity of any Amazon agents who allegedly engaged in the surveillance or gave the impression thereof. Amazon has no knowledge of any alleged conduct that even remotely resembles the allegations involved in this Objection, the Petitioner filed no unfair labor practice charge related to any such conduct, and Amazon denies that any of its managers or agents engaged in such conduct. Without more meaningful notice of these allegations, however, Amazon will have no ability to prepare any litigation defense to this Objection. Therefore, Amazon moves the Region to provide details about Objection 7, including the time, place and Amazon agents purportedly involved.

F. Petitioner Objection 10

In Objection 10, the Petitioner alleged that “the Employer unlawfully imposed and/or discriminatorily enforced a new work rule at the facility prohibiting employees from arriving at the premises more than 30 minutes before the start of their shift and from remaining on the premises more than 30 minutes after the end of their shift.” The Objection uses broad language about alleged imposition of a work rule regarding site access, but the Order states that Objection 10 is coextensive with Case 10-CA-290974, which involved just a single alleged interaction between two Amazon agents and one employee in a breakroom. Amazon requests that the Region confirm that this Objection is fully coextensive and limited to the facts at issue in Case 10-CA-290974, or provide additional details about any broader facts at issue in Objection 10, including the dates, locations and Amazon agents involved.

G. Petitioner Objection 16

In Objection 16, the Petitioner alleged that “the Employer unlawfully terminated an employee, (b) (6), (b) (7)(C) , for engaging in protected concerted activities in support of the Petitioner.” Objection 16 therefore involves alleged facts that would form the basis of a quintessential Section 8(a)(3) discriminatory discharge unfair labor practice charge. To Amazon’s knowledge, neither the Petitioner nor (b) (6), (b) (7)(C) filed an unfair labor practice charge regarding (b) (6), (b) (7)(C) termination. It is well-established that unions cannot use the objections process to usurp the General Counsel’s exclusive authority to issue and prosecute unfair labor practice charges. *Texas Meat Packers*, 130 NLRB 279 (1961). In *Texas Meat Packers*, the Board held “in cases involving challenges, it is well settled that, in the absence of unfair labor practice charges, a discharge will be presumed to be for cause.” *Id.* at 279-280; *see also Dominos Pizza LLC.*, 368 NLRB No. 142 (Dec. 16, 2019) (“[w]here . . . the conduct alleged to have interfered with the election can only be



held to be such interference upon an initial finding that an unfair labor practice has been committed, it is the Board's policy not to inquire into such matters in the guise of considering objections to an election"). In this case, (b) (6), (b) (7)(C) termination cannot possibly qualify as objectionable conduct unless it was a discriminatory discharge under Section 8(a)(3).

Because (b) (6), (b) (7)(C) and the Petitioner did not file any prerequisite unfair labor practice charge with respect to this Objection, Amazon moves the Region to reconsider its finding that Objection 16 raises substantial and material issues that are best resolved at a hearing and to correct the order to dismiss Objection 16, or to explain how Objection 16 exists independently of any alleged conduct that would fall under the General Counsel's exclusive authority to handle Section 8(a)(3) unfair labor practice charges in light of *Texas Meatpackers* and its progeny. 130 NLRB at 279-280.

#### H. Petitioner Objection 17

In Objection 17, the Petitioner alleged that "the Employer unlawfully sent text messages to employees containing false accusations that pro-union employees were harassing coworkers, and the Employer encouraged employees to report such harassment to the Employer's Human Resource department." The Order does not specify a corresponding unfair labor practice case. Amazon believes the Region erred in including Objection 17 in the Order. On August 26, 2022, the Region dismissed the coextensive Case 10-CA-295758, which involved identical allegations to those contained in Objection 17. The Order fails to explain how Objection 17 "raises substantial and material issues of fact," given the dismissal of the coextensive unfair labor practice charge. Indeed, in all other cases when alleged objections overlapped with dismissed unfair labor practice cases, the Region dismissed the objections, too, finding a failure "to establish substantial and material issues of fact."

To the extent Objection 17 involves facts or circumstances unique from the allegations involved in Case 10-CA-295758, Amazon requests that the Region provide details about the nature of the allegations, including the dates, locations, and the Amazon agents involved. If, as Amazon believes, Objection 17 is coextensive with Case 10-CA-295758, then Amazon requests that the Region correct the Order to dismiss Objection 17 for failure to raise substantial and material issues of fact.

I. Petitioner Objection 18

In Objection 18, the Petitioner alleged that “the Employer unlawfully provided the Petitioner with a voter list which contained substantial errors.” The Order fails to identify the “substantial errors” allegedly at issue, and Amazon disputes that any “substantial errors” exist. This detail is critical for Amazon to prepare its defense given that the voter list included more than 6,000 employees. Amazon is operating under information and belief that Objection 18 focuses on the alleged “bad addresses” challenged by the Petitioner during the vote count process. If that is correct, the Regional Director should specify as such in the Order and provide additional details on the specific nature of the errors the Petitioner claims occurred, including details about the relevant individuals and the alleged evidence of inaccuracy, so that Amazon can investigate and prepare its response to the objection. To the extent Objection 18 involves any other allegations, the Region should provide details for the same reasons.

J. Petitioner Objection 19

In Objection 19, the Petitioner alleged that “the Employer unlawfully threatened employees with plant closure if the Petitioner won the representation election.” The Order states that Case 10-CA-292230 is coextensive with Objection 19. However, this appears to be an error, as the circumstances alleged in Objection 19 are coextensive with Case 10-CA-294283. Amazon moves the Region to correct the Order to list the correct coextensive unfair labor practice case, or clarify

how Objection 19 is coextensive with Case 10-CA-292230. Assuming the Region corrects the error and associates Objection 19 with Case 10-CA-294283, Amazon further requests that the Region confirm that the objection is truly coextensive with Case 10-CA-294283, and does not include any other alleged instances of threats of plant closure other than the one at issue in Case 10-CA-294283.

For all of the foregoing reasons, the Employer moves that the Regional Director issue an Amended Report on Objections and Challenged Ballots, Order Consolidating Cases and Notice of Hearing that addresses the deficiencies and errors in the original Order and provides the Employer with the required meaningful notice of the objections.

Respectfully submitted this 28th day of August, 2023.

/s/ Robert T. Dumbacher  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing document was electronically filed with the NLRB and was served this 28th day of August, 2023 via email or first class mail, as indicated below, to:

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